IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

OP.No. 12532 of 2003(P)

PETITIONER:

K.N.PARAMESWARAN NAMBOODIRI,
S/O.LATE NARAYANAN NAMBOODIRI,KADAMARUKU ILLAM,
MUTTAMKARA, MUTTOM VILLAGE, THODUPUZHA,
REPRESENTED BY POWER OF ATTORNEY HOLDER
M.V.NARAYANAN NAMBOODIRI,S/O.VASUDEVAN
NAMBOODIRI,R/AT MUNDAKUDI ILLAM,HOUSE NO.32/1599,
VENNALA, PALARIVATTOM, COCHIN.

BY ADV. SRI.T.C.MOHANDAS
SRI.T.M.SUNIL
SMT.S.CHITHRA
SRI.A.R.GANGADAS

RESPONDENT:

KURIAN, S/O. JOSEPH,
VARICKAMAKAL HOUSE, MUTTOMKARA, MUTTOM VILLAGE,
THODUPUZHA, REPRESENTED BY THE OWNER OF ATTORNEY
JOSEPH JOSEPH, VARIKAMAKAL HOUSE, MUTTOMKARA,
MUTTAM VILLAGE.

BY ADV. SRI.GEORGE KURUVILLA(ALAPPUZHA)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.21332/2003 IN O.P.NO.12532/2003 P

DISMISSED

16/07/2007 **SD/-PIUS C. KURIAKOSE, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE POWER OF ATTORNEY.**

EXT.P2: **CAVEAT PETITION 202/1997 DISTRICT COURT (VACATION COURT) THODUPUZHA.**

EXT.P3: **COPY OF THE PLAINT IN O.S.NO.185/1997 MUNSIFF'S COURT, THODUPUZHA.**

EXT.P4: **COPY OF THE AFFIDAVIT AND PETITION IN I.A.NO.254/1997 IN O.S.NO.185/97 MUNSIFF COURT, THODUPUZHA.**

EXT.P5: **COPY OF ORDER OF THE STATUS QUO OF THE DISTRICT (VACATION COURT).**

EXT.P6: **COPY OF THE JUDGMENT IN O.S.NO.185/1997 MUNSIFF COURT, THODUPUZHA.**

EXT.P7: **COPY OF THE COMMON JUDGMENT IN A.S.NO.67/2000 AND CMA.NO.17/2001.**

EXT.P8: **COPY OF THE AGREEMENT DTD. 2/03/1997.**

EXT.P9: **COPY OF THE AFFIDAVIT AND PETITION IN I.A.NO.298 OF 1997.**

EXT.P10: **COPY OF THE OBJECTIONS FILED BY THE RESPONDENT.**

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): **COPY OF THE COMMISSION REPORT DTD. 23/04/97 FILED B BY ADV. JOSHY PAUL.**

EXT.R1(B): **COPY OF THE SECOND COMMISSION REPORT FILED BY ADV. JOSHY PAUL.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

O.P. No. 12532 OF 2003

Dated this the 16th day of July, 2007

J U D G M E N T

Ext.P7 judgment of the Subordinate Judge's Court, Thodupuzha which is a common judgment in AS.67/2000 and CMA. No.17/01 is under challenge to the extent the same pertains to the judgment in CMA. 17/01 in this writ petition filed byone K.M.Parameswaran Namboothiri who was the defendant in the suit and the respondent in the CMA. In this writ petition he is represented by his power of attorney holder one M.E.Narayanan Namboothiri and Ext.P1 is copy of the power of attorney. According to him his family owns and possesses properties in Muttom Village, Thodupuzha Taluk and the respondent owns the adjoining properties. On coming to know that the members of the petitioner's family have partioned the properties amongst themselves and that the petitioner has become entitled to five out of six shares of the properties included in Schedules A, C, D, E and F of the partition deed of 1989 first respondent instituted O.S. 269/90 on the files of the Munsiff's Court, Thodupuzha for the alleged demarcation of the common boundary between the petitioner's property and his properties lying contiguously. A commission was also taken out from the court in that suit for a report as to the unreported

portion of the properties. In that suit the mother and sister of the petitioner are also arrayed as defendants 2 and 3. The Commissioner reported that for the lie and nature of the improvements the petitioner his sister and mother are in possession of the disputed property. Thereafter the respondent filed application for amendment of the plaint so as to incorporate a relief of recovery of possession of the disputed plot. If the court ultimately finds that the defendants are in possession of the disputed plot the amendment petition and the suit stood adjourned to 3-3-1997 along with another suit O.S,.324/90. On 3-3-1997 the plaintiff and counsel were absent and consequently both the suits as well as the application for amendment were dismissed by the court for default. Respondents filed an application for restoration of the suit as well as the amendment application. The learned Munsiff dismissed the application for restoration, but in appeal, the appellate court allowed the applications and restored the suit as well as the application for amendment. But thereafter suit was again dismissed for default and as on the date of filing of the present O.P. a petition for restoration of the suits at the instance of the respondent is pending. The petitioner submits that his mother, sister and himself had agreed to sell 10 cents of land from out of the property belonging to them to

one Mr.P.M.Manual. According to them in part performance of the agreement for sale which they had executed on 2-3-1997 the had handed over possession of the property to Manuel. Sri.Manuel anticipating institution of a suit by the respondent filed caveat petition Ext.P2 before the District Court, Thodupuzha (Vacation Court). After receiving notice of Ext.P2 caveat the respondent filed a suit which was later numbered as OS.185/97 before the Vacation Court seeking permanent injunction to restrain the petitioner his men and agents from constructing any road through the plaint schedule property and from inducting any strangers therein or altering the lie and nature of the property. Ext.P3 is copy of the suit. A reading of Ext.P3 will show that the respondent plaintiff was claiming only a temporary relief i.e., relief of injunction till O.S.269/90 and the petition for amendment of that plaint were restored to file. In Ext.P3 suit respondent filed Ext.P4 application for temporary injunction since the petitioner had anticipated that the respondent will be creating all sorts of difficulties to the petitioner in the matter of the petitioner and his family members dealing with their properties petitioner had given watching brief to his Advocate who was able to take notice when the respondent's counsel was moving the Ext.P4 application for interim orders. Petitioner points

out that to the knowledge of the respondent neither the petitioner's sister nor mother or Manuel were made parties to Ext.P3 and P4. The learned District Judge could pass an apparently innocuous order Ext.P5 directing maintenance of status quo. Ext.P5 order is addressed to one Narayanan Namboothiri. The petitioner submits that though Ext.P5 order was addressed to Narayanan Namboothiri and not to the petitioner Parameswaran Namboothiri, the petitioner felt that in deference the order passed by the District Court after hearing his counsel to maintain status quo it is not proper to execute sale deed in favour of Manuel. So sale sled deed was not executed, but Manuel continued to be in possession of the property agreed to be assigned to him. Subsequently respondent filed IA.785/97 to initiate proceedings against the petitioner under the provisions of Order 39 Rule 2(9) C.P.C. for the alleged violation of the order to maintain status quo. The learned Munsiff after trial passed Ext.P6 common judgment dismissing the suit as well as the application for maintenance of status quo. Respondent preferred appeal against the decree and C.M. Appeal against the order dismissed the I.A. under Order 39 Rule 2A. The appeal was dismissed confirming trial court's judgment and decree. The C.M.A. directed against the order dismissing the

prosecution petition was allowed and the petitioner was directed to restore the land to the original condition within three months of the date of the judgment and it was ordered that failure to do so would entail attachment of the property and arrest and detention in civil prison for three months. Ext.P7 is the common judgment in the appeal as well as the C.M.A. Ext.P7 is challenged to the extent it pertains to the judgment in the CMA on various grounds. It is urged that the direction to restore status quo anti is not capable of compliance since there is no convincing material to show as to what was the state of affairs at the time when the court passed the original order leading to Ext.P6 order in the I.A. for prosecution. It is urged that the very suit in which the order for maintenance of status quo was passed was per se maintainable in law since that was a suit for temporary relief. Since the suit was incompetent any interim order passed therein is without jurisdiction and hence there cannot be any proceedings for alleged violation of such an interim order which is liable to be ignored being without jurisdiction. It is urged that the legislative object underlying Order 39 Rule 2A is not to punish the guilty but is only intended to ensure that the relief which may ultimately be granted in the suit is not defeated. The suit having been dismissed finally there is no

justification for directing status quo anti to be restored in respect of the suit property and to detain the petitioner in civil prison as a punishment for not obeying the said direction. It is urged that the lower appellate court has erred in its reasoning and that is why the conclusion that the contract for sale between the petitioner and Sri.Manuel has not been acted upon and that why sale deed was not executed and therefore contract for sale cannot be relied on for the purpose of handing over possession to Mr.Manuel. According to the petitioner the prayer in the suit as well as in the injunction petition will show that the purpose of the suit and the petition was to restrain the petitioner from executing any sale deed. The very fact that the petitioner did not execute the sale deed would show that the petitioner against whom there was no specific order restraining from executing sale deed was in deference order of status quo court below should have seen that the conduct of the plaintiff was absolutely unfair. Obviously the plaintiff wanted to bypass a caveat which had been lodged in the vacation court by Sri.Manuel who had asserted possession on the basis of the agreement for sale in his favour. It is urged that Manuel having already been in possession of the property pursuant to the agreement a case which is practically accepted by the

court for taking decision in the suit it was highly improper to direct the petitioner who is not in possession to restore the land to its original condition and in default to attach the property and to arrest and detain the petitioner. The non-impleadment of the petitioner's mother and sister to the suit coupled with the showing of a wrong name for the petitioner the sole respondent in the I.A. and the circumstance that the registry of vacation court will be concerned only with I.A. will show that the plaintiff was playing fraud on the petitioner and on the vacation court so that he could snatch an ex parte order.

2. I have heard the submissions of Sri.T.C.Mohandas, learned counsel for the petitioner and those of Sri.C.G.Sunil, learned counsel for the respondent. Addressing me on the various grounds raised Sri.T.C.Mohandas would place reliance on the judgment of the Supreme Court in Tayabbhai M.Bagasarwalla v. Hind Rubber Industries Pvt. Ltd. AIR 1997 SC 1240 wherein the Supreme Court has indicated that it may not be proper to invoke the provisions of Order 39 Rule 2A in a situation where there was an endeavour to snatch an interim order from the court. Mr. Sunil, learned counsel for the respondent submitted that the order of the vacation court for maintenance of status quo has been violated is unassailable and there

is no warrant for interfering with that finding in the narrow scope of this court's supervisory jurisdiction under Article 227 the dignity of the court was paramount lest the people will come to lose faith in rule of law. I called for the records relating to the suit as well as the proceedings for prosecution and have examined them. I agree with the learned counsel for the respondent that there is no warrant within the narrow contours of this court's supervisory jurisdiction under Article 227 for interfering with the findings in point No.3 in Ext.P7 judgment that the interim order dated 22-4-1997 was violated by the writ petitioner. I find merit in the submission of the counsel for the petitioner that in view of the finality attained by the negative decree which was passed in the suit proper order to be passed on the prosecution petition was not to compel restoration of status quo would perhaps to inflict him with some punishment as is prescribed by Order 39 Rule 2A or to direct him to pay a reasonable compensation to the injured party. At the same time the circumstances of this case very strongly support the case of the petitioner that there was an attempt by the respondent plaintiff to snatch an ex parte order in respect of the properties behind the back of one Manuel who had asserted rights over the property by lodging a caveat and also behind the back of the

petitioner and his co-owners who were parties in the earlier suit which had been dismissed for default more than once. Petitioner's co-owners were not made parties at all in the present suit. Though petitioner was made a party in the application for temporary injunction his name was written wrongly though correction petition allowed subsequently I am not prepared to agree with the learned lower appellate court who thought that it was by a mistake that the petitioner's name was shown wrongly in the IA. In my opinion the petitioner wanted to bypass caveat lodged by Sri. Manuel and also the watching brief which in all probability he knew had been given by the petitioner to advocate for avoiding passage of any ex parte orders. Whether the petitioner's counsel could notice the motion in spite of the petitioner's name being wrongly shown is a different matter.

3. Under the above circumstances allowing the writ petition I set aside Exts.P6 and P7 to the extent it pertains to the judgment in the civil miscellaneous appeal and remit I.A. No. 785/97 back to the Munsiff Court for taking the correct decision as to what is the proper decision to be taken in the prosecution petition. It is made clear that I have not upsetting the finding of the lower appellate court that the petitioner is guilty of having violated the order to maintain status quo.

The learned Munsiff will issue notice to the plaintiff also directing him to show cause as to why action should not be taken against him for having deliberately tried to "snatch an order" from the vacation court behind the back of Manuel and the petitioner and his co-owners. The needful in the matter will be done by the learned Munsiff at the earliest and at any rate, within three months of receiving copy of this judgment. Transmit the records.

(PIUS C.KURIAKOSE, JUDGE)

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